

# MEMORANDUM

July 12, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: NOHEMI GUTIERREZ FERGUSON  
GUTIERREZ, PRECIDADO & HOUSE LLP

DAVID B. KELSEY  
Assistant County Counsel  
Management Services Division

RE: Gabriel Zaragoza v. County of Los Angeles  
OAAC Case No. IN03-0337

DATE OF  
INCIDENT: August 18, 2003

AUTHORITY  
REQUESTED: \$30,000.00

COUNTY  
DEPARTMENT: Los Angeles County Department of the Public Defender


---

## CLAIMS BOARD ACTION:

☒ Approve

☐ Disapprove

☐ Recommend to Board of  
Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on July 19, 2004

## SUMMARY

This is a recommendation to settle for \$30,000.00, a claim brought by Los Angeles Department of the Public Defender ("Public Defender") employee, Gabriel Zaragoza, Deputy Public Defender IV. In exchange for the monetary compensation, Mr. Zaragoza will refrain from filing a DFEH complaint and civil action against the County.

## LEGAL PRINCIPLES

It is a violation of both State and Federal law to retaliate against an employee for engaging in a protected activity. Reporting discrimination or harassment is a protected activity.

A public entity is responsible for the wrongful acts of its employees which were done in the course and scope of their employment.

## SUMMARY OF FACTS

On April 1, 2002, Gabriel Zaragoza, a Deputy Public Defender IV, was assigned as Acting Head Deputy of the Department's Central Felonies Section. On January 24, 2003, Mr. Zaragoza was assigned to the PIAS unit (still as an Acting Head Deputy).

On January 28, 2003, Mr. Zaragoza attended a meeting at Central Felonies at which he alleges certain racially-discriminatory comments were made.

Mr. Zaragoza filed a racial discrimination / harassment complaint with the Department for those statements, and OAAC was notified. The Department immediately began an investigation. During the investigation, Mr. Zaragoza pointed to another alleged instance of discrimination in 2002 at which some of the same individuals were present.

The Department's investigatory report found no basis for Mr. Zaragoza's claims and was lodged with OAAC on April 22, 2003. OAAC reviewed and approved the report and letters of determination were issued on July 1, 2003.

Mr. Zaragoza's performance evaluation was presented to him on August 4, 2003. Mr. Zaragoza believed he was rated lower than in the past due to the complaints of racial discrimination, and thus alleged retaliation.

In addition, Mr. Zaragoza alleged that he was subjected to further retaliatory conduct in the form of meritless internal investigations regarding his participation in a Bible study with subordinate employees, and for alleged preferential treatment of another employee.

On August 18, 2003, Mr. Zaragoza was reassigned to a felony trial assignment (IV) in Compton. He considered the location of the reassignment to be further retaliation.

Due to the allegations of retaliation in the grievance, the Department felt that the routine grievance process was insufficient and instead notified the OAAC. The Department assigned Laurence Sarnoff to conduct an investigation into all aspects of the grievance. Mr. Sarnoff found that the Department acted properly, but that there were some mistakes in Mr. Zaragoza's performance evaluation.

Mr. Zaragoza retained counsel and the matter was mediated on June 16, 2004, and settled on June 29, 2004.

## DAMAGES

If he were to prevail on his retaliation claim, Mr. Zaragoza could be entitled to lost earnings for the difference in pay between the acting position and his current position, and emotional distress damages. The lost pay for the time period he worked in the position without a raise would be about \$10,000.00. The future lost earnings would be between \$50,000 and \$100,000 if he were to prove the loss of further promotional opportunities. Emotional Distress damages are difficult to estimate. However, in a case like this, one could expect a verdict in the range of \$100,000.00 to \$750,000.00, if liability were established.

Mr. Zaragoza would also be entitled, in the event he prevails, to attorney's fees and costs in addition to any damages that he might recover. Mr. Zaragoza's attorneys have indicated that they bill Mr. Zaragoza at \$375.00 per hour. If this case were litigated through trial, those fees and costs could amount to between \$150,000 and \$300,000. Moreover, Mr. Zaragoza's attorneys would likely seek a multiplier if they prevailed.

The settlement calls for the County to pay \$30,000.00 to Mr. Zaragoza for all claims for damages, costs, and attorneys' fees.

### STATUS OF CASE

This case has not yet been filed. Mr. Zaragoza would have to file a DFEH claim on or before August 18, 2004 to preserve his right to sue.


As of June 30, 2004, expenses incurred by the County were attorney's fees of \$4,104.00 and costs of \$1,736.63 (A paid mediator was used.) If the case were to go through complete discovery and trial, the County would incur an additional \$50,000.00 to \$75,000.00 in fees and expenses.

### EVALUATION

This case would probably survive summary judgment as Mr. Zaragoza would argue that the County used his writing skills and poor management ability as a pretext to retaliate against him for complaining against the discriminatory behavior. Also, since the performance evaluation and alleged retaliatory investigations occurred within six months of his complaint, he might be able to prove causation. Accordingly, this case would probably have to be tried.

Given the facts of the underlying discrimination complaint, there is a possibility that the jury could find for Mr. Zaragoza. Thus, it makes sense to settle the matter prior to the commencement of litigation for \$30,000.00. Moreover, both the Public Defender's office and Mr. Zaragoza wish to continue working together and avoiding litigation would benefit the relationship.

APPROVED:

  
DAVID B. KELSEY  
Assistant County Counsel  
Management Services Division

DBK:mag